

Montana Water Court
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IN THE WATER COURT OF THE STATE OF MONTANA
CLARK FORK DIVISION
KOOTENAI RIVER BASIN (76D)
PRELIMINARY DECREE

* * * * *

CLAIMANTS: Daniel R. Goyen; Rose C. Goyen

CASE 76D-0246-R-2023

76D 141303-00

76D 141304-00

NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusions of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must serve a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

MASTER'S REPORT

Statement of the case

Irrigation claim 76D 141303-00 received the following issue remark:

THE CLAIMED PRIORITY DATE MAY BE QUESTIONABLE. THE PRIORITY DATE ON THE SUBMITTED NOTICE OF APPROPRIATION IS 7/31/1945.

Fish and wildlife claim 76D 141304-00 received the following issue remarks:

THE CLAIMANT DID NOT IDENTIFY THE PERIOD OF DIVERSION FOR THIS RIGHT. A PERIOD OF DIVERSION HAS BEEN ADDED TO MATCH THE PERIOD OF USE. IF NO OBJECTIONS ARE RECEIVED TO THE PERIOD OF DIVERSION OR PERIOD OF USE, THOSE ELEMENTS WILL BE DECREED AS SHOWN ON THIS ABSTRACT AND THIS ISSUE REMARK WILL BE REMOVED FROM THIS CLAIM.

SOURCE NAME WAS MODIFIED AS A RESULT OF DNRC REVIEW UNDER MONTANA WATER COURT REEXAMINATION ORDERS. IF NO OBJECTIONS ARE FILED TO THIS CLAIM, THESE ELEMENTS WILL REMAIN AS THEY APPEAR ON THIS ABSTRACT AND THE REMARK WILL BE REMOVED FROM THE CLAIM.

CLAIMED VOLUME EXCEEDS CAPACITY OF RESERVOIR PLUS EVAPORATIVE LOSSES. THE CLAIMED VOLUME CAN BE CONTESTED BY PROPER OBJECTION. IF NO OBJECTIONS ARE FILED TO THIS CLAIM THE VOLUME WILL BE DECREED AS CLAIMED, AND THIS REMARK WILL BE REMOVED FROM THE CLAIM.

Issue remarks result from Department of Natural Resources and Conservation ("DNRC") claims examination. Claims examination confirms the historical use of water right claims and identifies issues with claims. If claims examination cannot confirm some aspect of a claim, an issue remark is added to the claim.

Montana law requires the Water Court to resolve issue remarks.

Issues

Are the issue remarks resolved?

Findings of fact

Claims 76D 141303-00 and 76D 141304-00 are multiple uses of the same water right. A multiple use of a water right occurs when one water right is used for more than one purpose.

The Preliminary Decree abstracts for these multiple use claims identify the historically accurate elements for each claim.

Principles of law

1. A properly filed Statement of Claim for Existing Water Right is prima facie proof of its content. Section 85-2-227, MCA. Prima facie proof may be overcome by other evidence that proves, by a preponderance of the evidence, that an element of the prima facie claim is incorrect. This is the burden of proof for every assertion that a claim is incorrect. Rule 19, W.R.Adj.R. A preponderance of the evidence is a “modest standard” and is evidence that demonstrates the fact to be proved is “more probable than not.” *Hohenlohe v. State*, 2010 MT 203, ¶ 33, 357 Mont. 348, 240 P.3d 628.

2. The Montana Water Court is permitted to use information submitted by the Department of Natural Resources and Conservation, the statement of claim, information from approved compacts, and any other data obtained by the Court to evaluate water right claims. Section 85-2-231(2), MCA.

3. When resolving issue remarks, the Montana Water Court must weigh the information resulting in the issue remark and the issue remark against the claimed water right. Section 85-2-247(2), MCA.

4. The Montana Water Court has the authority to resolve issue remarks when the claim file and information available to the Court provide a sufficient basis to do so. Section 85-2-248(3), MCA.

Analysis

Although the above captioned claims are multiple uses, only irrigation claim 76D 141303-00 appeared with an issue remark concerning priority date. No DNRC examination materials support placement of the issue remark on the claim. Additionally, the issue remark incorrectly notes that the priority date identified by the filed notice of appropriation is 1945. The notice of appropriation - filed in 1945 - and included with both statements of claim states that beneficial use of the water began 18 years earlier, hence the 1927 priority date identified by both prima facie statements of claim.

The issue remarks on claim 76D 141304-00 note period of diversion and source were modified by DNRC during claims examination, and the volume identified by the

claim was excessive. Each issue remark instructed claimant and other water users that if no objections were filed to the elements identified by the issue remarks, the elements would remain as they appear on the Preliminary Decree abstract. No one objected to the elements of claim 76D 141304-00.

Conclusions of law

The issue remarks were resolved based upon information in the claim files.

The priority date issue remark is not supported by evidence sufficient to overcome the prima facie proof afforded the priority date for irrigation claim 76D 141303-00. The priority date issue remark does not raise an issue that requires resolution by the court.

The Preliminary Decree abstract for fish and wildlife claim 76D 141304-00 identifies the historically accurate source, period of diversion, and volume. The issue remarks concerning these elements served their notice purpose.

Recommendations

Irrigation claim 76D 141303-00 and fish and wildlife claim 76D 141304-00 accurately reflect historical use. No changes to the elements of the claims should be made.

The issue remarks should be removed from the claim abstracts.

Post Decree Abstracts of Water Right Claim accompany this report to confirm removal of the issue remarks in the state's centralized water right record system.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail

Daniel R. Goyen (Deceased)
PO Box 746
Libby, MT 59923-0746

Rose C. Goyen
266 Dolphin Way
Libby, MT 59923

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**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
KOOTENAI RIVER
BASIN 76D**

Water Right Number: 76D 141303-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: DANIEL R GOYEN
DECEASED
PO BOX 746
LIBBY, MT 59923 0746

ROSE C GOYEN
266 DOLPHIN WAY
LIBBY, MT 59923

Priority Date: SEPTEMBER 12, 1927
Type of Historical Right: FILED
Purpose (use): IRRIGATION
Irrigation Type: SPRINKLER/FLOOD/FURROW
Flow Rate: 30.00 GPM
Volume: THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.
Climatic Area: 3 - MODERATE
Maximum Acres: 10.00
Source Name: SPRING, UNNAMED TRIBUTARY OF LIBBY CREEK
Source Type: SURFACE WATER
ALSO KNOWN AS ECHO SPRINGS

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		S2SESW	25	30N	31W	LINCOLN

Period of Diversion: APRIL 1 TO SEPTEMBER 30
Diversion Means: PUMP
Period of Use: APRIL 1 TO SEPTEMBER 30

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	10.00		S2SESW	25	30N	31W	LINCOLN
Total:	10.00						

Remarks:

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE MULTIPLE USES OF THE SAME RIGHT. THE USE OF THIS RIGHT FOR SEVERAL PURPOSES DOES NOT INCREASE THE EXTENT OF THE WATER RIGHT. RATHER IT DECREES THE RIGHT TO ALTERNATE AND EXCHANGE THE USE (PURPOSE) OF THE WATER IN ACCORD WITH HISTORICAL PRACTICES.

141303-00 141304-00

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
KOOTENAI RIVER
BASIN 76D**

Water Right Number: 76D 141304-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners:

DANIEL R GOYEN

DECEASED

PO BOX 746

LIBBY, MT 59923 0746

ROSE C GOYEN

266 DOLPHIN WAY

LIBBY, MT 59923

Priority Date: SEPTEMBER 12, 1927

Type of Historical Right: FILED

Purpose (use): FISH AND WILDLIFE

Flow Rate: A SPECIFIC FLOW RATE HAS NOT BEEN DECREED FOR THIS USE FROM THIS ONSTREAM RESERVOIR.

Volume: 591.00 AC-FT

THE USE OF THIS WATER APPEARS TO BE LARGELY NONCONSUMPTIVE.

Source Name: SPRING, UNNAMED TRIBUTARY OF LIBBY CREEK

Source Type: SURFACE WATER

ALSO KNOWN AS ECHO SPRINGS

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		S2SESW	25	30N	31W	LINCOLN

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: DAM

Reservoir: ONSTREAM

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	S2SESW	25	30N	31W	LINCOLN

Diversion to Reservoir: DIVERSION # 1

Depth: 3.00 FEET

Surface Area: 0.40 ACRES

Capacity: 0.40 ACRE-FEET

Period of Use: JANUARY 1 TO DECEMBER 31

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			S2SESW	25	30N	31W	LINCOLN

Remarks:

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE MULTIPLE USES OF THE SAME RIGHT. THE USE OF THIS RIGHT FOR SEVERAL PURPOSES DOES NOT INCREASE THE EXTENT OF THE WATER RIGHT. RATHER IT DECREES THE RIGHT TO ALTERNATE AND EXCHANGE THE USE (PURPOSE) OF THE WATER IN ACCORD WITH HISTORICAL PRACTICES.

141303-00

141304-00